

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

**AVANTE INTERNATIONAL
TECHNOLOGY CORP.,**

Plaintiff,

vs.

**PREMIER ELECTION SOLUTIONS,
INC., SEQUOIA VOTING SYSTEMS,
and ELECTION SYSTEMS &
SOFTWARE, INC.,**

Defendants.

Case number 4:06cv0978 TCM

ORDER

This case is before the Court on its own motion and on the motion of Sequoia Voting Systems for reconsideration and/or clarification.

A. The parties have noted that there is an apparent discrepancy in the Court's claim construction order between its statement that the term "imaging" has the same meaning in the two patents still at issue, United States Patent Numbers 6,892,944 ("the '944 patent") and 7,077,313 ("the '313 patent"), and its construction of that term in the context of the '944 patent as being, in relevant part, "capturing and *reproducing* images and data" and in the context of the '313 patent as being, in relevant part, "capturing and *recording* images and data." The second construction is a typographical error. As is clear from the context of that paragraph, the correct wording is "capturing and reproducing images and data."

Accordingly, page 45 of the Memorandum and Order on Claim Construction is amended nunc pro tunc to read **Electronically capturing and reproducing images and data from a ballot in a pixelated or bitmapped format.**

B. Sequoia Voting Systems ("Sequoia") moves this Court to reconsider and clarify its July 16, 2008, memorandum and order. A portion of its request is addressed above. The Court has thoroughly reviewed the remaining arguments and finds them to be without merit. Sequoia's motion [Doc. 487] is DENIED.

SO ORDERED.

C. Joint Statement of Issues Remaining Before the Court. Defendants Premier Election Solutions, Inc., Election Systems & Software, Inc., and Sequoia posit four issues that "can and should be resolved in this case." The first two relate to counterclaims raised in this case; the second two relate to allegations at issue in another case, Avante v. Premier Election Solutions, Inc., 4:08cv0587 TCM (filed April 25, 2008). A responsive pleading by Sequoia, one of the two defendants in this latter case, is not due until September 8, 2008.

On the other hand, Avante argues that the first two issues can be resolved in 4:08cv0587 with the second two. Avante asks the Court to dismiss in this case the counterclaims giving rise to the first two issues.

Clearly, what remains pending *in this case* are two issues:

1. The alleged invalidity of claims 1, 31-32, and 42 of the '944 patent and claims 13-14 and 47-48 of the '313 patents: and
2. The alleged unenforceability of the '944 patent and the '313 patents due to inequitable conduct during prosecution of the patents.

The trial of these two issues will be set in the Final Case Management Order entered
this date.

/s/ Thomas C. Mummert, III
THOMAS C. MUMMERT, III
UNITED STATES MAGISTRATE JUDGE

Dated this 5th day of August, 2008.